

YOUR RIGHTS REGARDING HOSPITALIZATION AND DISCHARGE

Massachusetts General Laws Chapter 123 provides individuals with certain rights regarding hospitalization and discharge. Your rights regarding admission to and discharge from a hospital depend on your legal status. If you are at a hospital, you can ask staff for information about your status.

I. EMERGENCY ADMISSIONS: "THE PINK PAPER" ("SECTION 12")

In Massachusetts, any individual may be forcibly admitted to a facility for up to three business days. The application for this kind of admission, called an "Application for Temporary Hospitalization" is known by several names, including an "emergency admission," a "pink paper," or a "Section 12."

A physician, qualified psychiatric nurse, qualified psychologist, or police officer may apply to admit anyone to a facility for up to three business days if he or she believes that, without hospitalization, the person would "create a likelihood of serious harm by reason of mental illness." "Likelihood of serious harm" means one of three things:

- The person poses a substantial risk of physical harm to him/herself as manifested by evidence, threats of, or attempts at suicide or serious bodily injury; **or**
- The person poses a substantial risk of physical harm to others as evidenced by homicidal or violent behavior or evidence that others are in reasonable fear of violent behavior and serious physical harm from that person; **or**
- The person's judgment is so affected that there is a **very** substantial risk that the person cannot protect himself or herself from physical impairment or injury, **and** no reasonable provision to protect against this risk is available in the community.

If an examination of the individual is not possible because of the emergency nature of the case or because the person refuses to consent to such examination, a doctor, qualified psychologist, or psychiatric nurse does not even need to see the person before signing the Application for Temporary Hospitalization. He or she may rely instead on whatever facts and circumstances have come to his or her attention. If none of those three medical professionals is available, then a police officer is allowed to make the application without an examination. Since the law does not say what "facts or circumstances" might be considered relevant, a mental health clinician may have considerable leeway in making the decision.

Following this procedure, an individual may be admitted to a psychiatric facility without a court hearing and against his or her will for up to three business days, provided that a physician designated by the hospital has examined the person and signed the admission papers. If the paper is signed by a physician who is not designated by the hospital, by a qualified psychologist, by a qualified psychiatric nurse, or by a police officer, it is

considered only an application for hospitalization; a designated physician at the facility must still actually examine and admit the person.

At the time of admission, the hospital must inform each individual that the facility will, upon the person's request, notify the state public defender agency, the Committee for Public Counsel Services (CPCS), of the admission. In those cases in which the hospital notifies CPCS, CPCS will "forthwith" appoint an attorney to meet with and, unless the person voluntarily and knowingly declines assistance, represent the person.

Additionally, if the confined person believes that "an abuse or misuse" of the admission process has occurred, the person or his or her counsel may seek emergency judicial review in district court. Unless the individual seeks a delay, the hearing must be held no later than the next business day after the request for the hearing.

At any time during these three business days, the hospital may: 1) *discharge* you if it determines that you are not in need of care and treatment; or 2) petition the district court for *involuntary commitment*. At any time during the three days, you may: 1) apply to change your status to that of a *conditional voluntary* patient; or 2) seek emergency judicial review in district court (discussed above).

II. VOLUNTARY ADMISSIONS

If you admit yourself to a hospital as a *voluntary* patient, your status is totally voluntary and may be terminated by you or the hospital at any time. Nevertheless, the hospital may restrict your right to leave to normal working hours and weekdays. Although the law allows for voluntary admissions, in practice hospitals rarely offer them. When facility staff describe a patient as "voluntary," typically they mean that the patient has "conditional voluntary" status.

III. CONDITIONAL VOLUNTARY ADMISSIONS ("10 & 11")

If the hospital considers you competent to make the decision, you may apply for *conditional voluntary* admission status. As a conditional voluntary patient, you remain on this status at the hospital indefinitely, until the hospital decides to discharge you or you ask to leave by filing a "three day notice."

Signing into the Hospital as a Conditional Voluntary Patient

Before signing in as a conditional voluntary patient, you *must* be given the opportunity to consult with an attorney or legal advocate.

A facility may accept an application for conditional voluntary admission only if, upon assessment by the admitting or treating physician, the physician determines that the person understands the conditional voluntary admission process.

By signing a conditional voluntary admission, you forfeit certain rights:

- You waive the right to a hearing before a judge to determine whether you meet

the legal standard for involuntary commitment. However, you regain this right by signing a “three day notice”.

- You waive the right in some situations to certain guarantees of the federal constitution (right to safety, right to adequate treatment, and freedom from harm and undue restraint). However, the facility may be compelled to provide these rights under the *state* constitution.

The Three Day Notice

At any time during your conditional voluntary stay at the hospital, you may submit a written notice to the hospital of your intent to leave. This notice is called a “three day notice.” During these three days, you may be held at the hospital while the staff evaluates your clinical progress and suitability for discharge. You may not be held against your will for longer than three days *unless*, prior to the end of the third day, the hospital petitions for your commitment. Saturdays, Sundays and legal holidays are excluded from the calculation of the three days.

Practical advice: In deciding whether to submit your “three day notice” you may want to consult with your physician about your discharge plan and timetable for release. You may be able to negotiate an agreeable date for discharge. You may want to ask if the hospital would petition for your commitment were you to submit a “three day notice.”

IV. CIVIL COMMITMENT ("7 & 8")

Your Rights

If a hospital petitions the district court for your involuntary commitment, you have certain rights:

- **Notice** of the time and place of the court hearing, which must be held within five business days of the filing of the petition (unless you or your attorney requests a delay).
- The appointment of an **attorney** to represent you at the state's expense if you cannot afford one. The district court will notify you of the name of the attorney. You have a right to communicate with your attorney and to participate in the preparation of your case.
- An **independent psychiatric examination** (which you may request through your attorney).
- A full adversarial **hearing** which you can attend, cross-examine witnesses through your attorney, and testify on your own behalf.

The Hearing

At any time prior to the hearing the hospital may withdraw the commitment petition if:

- you agree to sign a conditional voluntary admission, or
- the hospital decides that you no longer need hospitalization and can safely be discharged.

To commit you, the judge must find, *beyond a reasonable doubt, that you pose a present danger to yourself or others by virtue of a mental illness and that no less restrictive alternative is appropriate or available*. If this standard is not met, the hospital must discharge you. The judge must issue a decision within ten days unless she provides written reasons for the delay.

Length of Commitment

The first commitment is valid for six months; subsequent commitments for 12 months. During your commitment, if the hospital determines that you no longer need treatment and care, it must discharge you. Prior to the end of each commitment period, the hospital must file a new petition in order to continue holding you involuntarily.

V. DISCHARGE UNDER CIVIL COMMITMENT

If you are involuntarily committed, your options for discharge are limited to judicial and administrative reviews.

Judicial Review

The 9(a) Appeal of a Commitment Order

You may request with the appellate division of the district court a review of *matters of law* arising in commitment hearings. You must claim that an error of law occurred regarding the prior hearing (for example, the judge improperly allowed a witness to be qualified as an expert). Using this method to obtain your discharge has drawbacks: it usually requires an attorney's help, is a slow process, and is an uphill battle. Regardless of the outcome of the appeal, you are likely to be confined for several months before it is heard.

The 9(b) Application for Discharge.

Any person may petition for a patient's discharge by applying in writing to a superior court. This application may be filed at any time and in any county and must state that the person named is improperly or unnecessarily retained.

Within seven days of receiving the petition, the superior court must notify the hospital and other interested persons (your physician, spouse or family) of the time and place of the hearing. The hearing must be held promptly before a superior court judge. The court will appoint an attorney to represent you if you cannot afford one. If the judge determines that you do not presently meet the commitment standard, you must be discharged.

Practical Advice: You may file the application at any time following your commitment. Ask the attorney who represented you in your district court commitment hearing to file the paperwork for the 9(b) proceeding in the superior court; he or she is required to initiate this proceeding upon your request. The superior court will then appoint a new attorney to handle your 9(b) proceeding. Because you will have the burden in this proceeding of proving that you do not need hospitalization, it is usually helpful to enlist an expert to conduct an evaluation of you and to testify on your behalf. Your attorney may request funds from the court to pay for this evaluation.

Administrative Review

Discretionary Discharge by the Facility

The hospital must discharge you when, in the hospital staff's opinion, you no longer need inpatient care. Therefore, you need not necessarily be confined for the full term of your commitment order.

Periodic Review by the Facility

The hospital must review your status at least once during the first three months of commitment, once during the second three months, and annually thereafter. The review must include a consideration of all possible alternatives to continued hospitalization. If you are found no longer to need hospitalization, you must be discharged. Both you and your nearest relative or guardian have a right to advance notice of the review, as well as the right to attend and participate.

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